

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

TEMPUR-PEDIC MANAGEMENT, INC.)
and TEMPUR-PEDIC NORTH AMERICA,)
LLC,)
)
Plaintiffs,)
)
)
v.) Civil Action No.
)
)
THE LOVESAC CORPORATION,)
ADVANCED FOAM RECYCLING, LTD.,)
d/b/a ACOMFORTSHOP.COM, and)
AMALGAMATE PROCESSING, LTD.,)
d/b/a ACOMFORTSHOP.COM,)
)
Defendants.)
)

COMPLAINT AND JURY DEMAND

This is an action for patent infringement brought by Plaintiffs Tempur-Pedic Management, Inc. (“TPMI”) and Tempur-Pedic North America, LLC (“TPNA”) (TPMI and TPNA together, “Plaintiffs”) against Defendants The LoveSac Corporation (“LoveSac”), Advanced Foam Recycling, Ltd., d/b/a acomfortshop.com (“Advanced Foam”), and Amalgamate Processing Ltd., d/b/a acomfortshop.com (“Amalgamate”) (LoveSac, Advanced Foam, and Amalgamate together, “Defendants”) arising from LoveSac, Advanced Foam, and Amalgamate’s unlawful infringement of TPMI’s patents.

THE PARTIES

1. TPMI is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Lexington, Kentucky. TPMI’s East Coast manufacturing facility is located in Duffield, Virginia.

2. TPNA is a Delaware limited liability corporation with its principal place of business located in Lexington, Kentucky. Tempur-Pedic Sales, Inc., a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Lexington, Kentucky, is the sole member of TPNA.

3. LoveSac is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Salt Lake City, Utah.

4. Advanced Foam is a limited partnership organized and existing under the laws of the State of Texas with its principal place of business in Richland Hills, Texas.

5. Amalgamate is a limited partnership organized and existing under the laws of the State of Texas with its principal place of business in Richland Hills, Texas.

JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Defendants pursuant to Virginia Code § 8.01-328.1, the Virginia Long-Arm Statute.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), as this action arises under the patent laws of the United States.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 because a substantial part of the events giving rise to Plaintiffs' claims herein occurred, and Defendants are otherwise subject to personal jurisdiction, in this judicial district.

FACTUAL BACKGROUND

9. TPMI and TPNA are in the business of selling mattresses, cushions, pillows, and other products incorporating viscoelastic foam materials.

The Tempur Patents

10. TPMI is the owner by assignment of United States Letters Patent No. 7,051,389 (the “‘389 Patent”), entitled “Comfort Pillow,” which was duly and legally issued by the United States Patent and Trademark Office on May 30, 2006. A copy of the ‘389 Patent is attached hereto as **Exhibit A**.

11. TPMI is the owner by assignment of United States Letters Patent No. 7,415,742 (the “‘742 Patent”), entitled “Comfort Pillow,” which was duly and legally issued by the United States Patent and Trademark Office on August 26, 2008. A copy of the ‘742 Patent is attached hereto as **Exhibit B**. The ‘389 and ‘742 Patents are collectively referred to as the “Tempur Patents.”

12. The Tempur Patents grant TPMI the exclusive right to make, use, offer for sale, sell, and import products incorporating the inventions claimed therein.

13. TPMI has granted TPNA a license to sell products incorporating the inventions claimed in the Tempur Patents in the United States. TPNA’s commercial pillows incorporating the teachings of the Tempur Patents have become the gold standard in the market and, therefore, are in high demand.

Infringement of the Tempur Patents

14. LoveSac manufactures and/or sells pillows incorporating viscoelastic foam materials. Advanced Foam and Amalgamate manufacture pillows incorporating viscoelastic materials which are sold employing the LoveSac trademark.

15. Upon information and belief, LoveSac, Advanced Foam, and Amalgamate are aware of TPNA’s commercial products made in accordance with the Tempur Patents as well as the tremendous success and reputation that TPNA products enjoy in the marketplace.

16. Upon information and belief, LoveSac, Advanced Foam, and Amalgamate have sought to exploit the success and reputation enjoyed by TPNA's products that incorporate the inventions claimed in the Tempur Patents.

17. Upon information and belief, LoveSac, Advanced Foam, and Amalgamate regularly transact business in the Commonwealth of Virginia and in this judicial district by, among other things, the demonstration, offer for sale, and sale of products meeting the limitations set forth in the claims of the Tempur Patents.

CAUSES OF ACTION

COUNT I

(Against LoveSac, Advanced Foam, and Amalgamate)
(Infringement of the '389 Patent)

18. Plaintiffs hereby reallege and incorporate the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

19. LoveSac, Advanced Foam, and Amalgamate have each infringed and continue to infringe, both directly and indirectly, one or more claims of the '389 Patent by making, using, offering for sale, selling, and/or importing products that infringe one or more claims of the '389 Patent, as well as inducing others to infringe one or more claims of the '389 Patent, and/or contributing to infringement of one or more claims of the '389 Patent by others.

20. Plaintiffs have been, and will continue to be, damaged by the infringement of the '389 Patent and will be irreparably damaged unless such infringement is enjoined.

COUNT II

(Against LoveSac, Advanced Foam, and Amalgamate)
(Infringement of the '742 Patent)

21. Plaintiffs hereby reallege and incorporate the allegations contained in paragraphs 1 through 20 as though fully set forth herein.

22. LoveSac, Advanced Foam, and Amalgamate have each infringed and continue to infringe, both directly and indirectly, one or more claims of the '742 Patent by making, using, offering for sale, selling, and/or importing products that infringe one or more claims of the '742 Patent, as well as inducing others to infringe one or more claims of the '742 Patent, and/or contributing to infringement of one or more claims of the '742 Patent by others.

23. Plaintiffs have been, and will continue to be, damaged by the infringement of the '389 Patent and will be irreparably damaged unless such infringement is enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendants as follows:

- (a) That this Court find that LoveSac, Advanced Foam, and Amalgamate have infringed one or more claims of the '389 Patent;
- (b) That this Court find that LoveSac, Advanced Foam, and Amalgamate have infringed one or more claims of the '742 Patent;
- (c) That this Court preliminarily and permanently enjoin, pursuant to 35 U.S.C. § 283, LoveSac, Advanced Foam, and Amalgamate, their officers, agents, attorneys, and employees, as well as those acting in privity or concert with any of the foregoing, from further infringement of the '389 Patent and the '742 Patent for the full term of each of these patents, respectively;
- (d) That this Court award damages to Plaintiffs, including pre-judgment and post-judgment interest, in an amount adequate to compensate Plaintiffs for LoveSac, Advanced Foam, and Amalgamate's infringement of one or more claims of each of the '389 and '742 Patents; and

(e) That this Court award Plaintiffs their respective costs, expenses, attorneys' fees, and such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all matters and issues triable by a jury.

Respectfully submitted,

TEMPUR-PEDIC MANAGEMENT, INC.
and TEMPUR-PEDIC NORTH AMERICA,
LLC,
Plaintiffs,
By their attorneys:

/s/ Wade W. Massie

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Dated: May 26, 2011